

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MIGUEL A. ALVAREZ,
 Plaintiff,

vs.

CAROLYN W. COLVIN, ACTING
 COMMISSIONER OF SOCIAL SECURITY
 ADMINISTRATION,
 Defendant.

Case No. 2:14-cv-00836-APG-CWH

ORDER

This matter is before the Court on Plaintiff's Motion/Application to Proceed *In Forma Pauperis* (#1), filed on May 27, 2014.

I. In Forma Pauperis Application

After careful review of Plaintiff's Motion/Application, the Court finds that Plaintiff has satisfied the indigency requirement of 28 U.S.C. § 1915(a)(1) and he is not able to pay the costs of commencing this action. Plaintiff submitted the affidavit required by § 1915(a) to show that he is unable to prepay fees and costs or give security for them. In Plaintiff's Motion/Application to Proceed *In Forma Pauperis*, Plaintiff reports that his total monthly income for the past 12 months is food stamps of \$189.00 per month and a housing subsidy of \$400.00 per month. Additionally, Plaintiff indicates that he owns a motor vehicle valued at \$14,000 and has monthly expenses of \$0 because the housing subsidy pays for rent and utilities. Based on this information, the Court finds that Plaintiff's income is insufficient to pay the filing fee in this case. Accordingly, the request to proceed *in forma pauperis* will be granted pursuant to 28 U.S.C. § 1915(a). The court will now review Plaintiff's complaint.

II. Screening the Complaint

Upon granting a request to proceed *in forma pauperis*, a court must additionally screen the complaint pursuant to § 1915(a). Federal courts are given the authority dismiss a case if the action is

1 legally “frivolous or malicious,” fails to state a claim upon which relief may be granted, or seeks
2 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). When a
3 court dismisses a complaint under § 1915(a), the plaintiff should be given leave to amend the complaint
4 with directions as to curing its deficiencies, unless it is clear from the face of the complaint that the
5 deficiencies could not be cured by amendment. *See Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir.
6 1995).

7 Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a complaint for
8 failure to state a claim upon which relief can be granted. Review under Rule 12(b)(6) is essentially a
9 ruling on a question of law. *North Star Intern. v. Arizona Corp. Comm’n*, 720 F.2d 578, 580 (9th Cir.
10 1983). In considering whether the plaintiff has stated a claim upon which relief can be granted, all
11 material allegations in the complaint are accepted as true and are to be construed in the light most
12 favorable to the plaintiff. *Russell v. Landrieu*, 621 F.2d 1037, 1039 (9th Cir. 1980).

13 Plaintiff’s complaint challenges a decision by the Social Security Administration (“SSA”)
14 denying benefits. Prior to filing suit, a plaintiff must exhaust administrative remedies. *See* 42 U.S.C.
15 § 405(g); *see also Bass v. Social Sec. Admin.*, 872 F.2d 832, 833 (9th Cir. 1989) (per curium) (“Section
16 405(g) provides that a civil action may be brought only after (1) the claimant has been party to a hearing
17 held by the Secretary, and (2) the Secretary has made a final decision on the claim”). Generally, if the
18 SSA denies a claimant’s application for disability benefits, he can request reconsideration of the
19 decision. If the claim is denied at the reconsideration level, a claimant may request a hearing before an
20 Administrative Law Judge (“ALJ”). If the ALJ denies the claim, a claimant may request review of the
21 decision by the Appeals Council. If the Appeals Council declines to review the ALJ’s decision, a
22 claimant may then request judicial review. *See generally* 20 C.F.R. §§ 404, 416.

23 Once a plaintiff has exhausted administrative remedies, he can obtain judicial review of a SSA
24 decision denying benefits by filing suit within sixty (60) days after notice of a final decision. *Id.* An
25 action for judicial review of a determination by the SSA must be brought “in the district court of the
26 United States for the judicial district in which the plaintiff resides.” *Id.* The complaint should state the
27 nature of Plaintiff’s disability, when Plaintiff claims he became disabled, and when and how he
28 exhausted his administrative remedies. The complaint should also contain a plain, short, and concise

statement identifying the nature of Plaintiff's disagreement with the determination made by the Social Security Administration and show that Plaintiff is entitled to relief. A district court can affirm, modify, reverse, or remand a decision if Plaintiff has exhausted his administrative remedies and timely filed a civil action. However, judicial review of the Commissioner's decision to deny benefits is limited to determining: (a) whether there is substantial evidence in the record as a whole to support the findings of the Commissioner; and (b) whether the correct legal standards were applied. *Morgan v. Commissioner of the Social Security Adm.*, 169 F.3d 595, 599 (9th Cir. 1999).

Plaintiff alleges that on March 28, 2014, the Appeals Council denied his request for review, and, at that time, the ALJ's decision became the final decision of the Commissioner. Thus, it appears Plaintiff has exhausted his administrative remedies. Additionally, Plaintiff's complaint includes sufficient facts to state a claim for relief. Finally, Plaintiff's Complaint was timely filed within the 65 day statute of limitations.

Based on the foregoing and good cause appearing therefore,

IT IS HEREBY ORDERED that:

1. Plaintiff's Motion/Application for Leave to Proceed *In Forma Pauperis* (#1) is **granted** with the caveat that the fees shall be paid if recovery is made. At this time, Plaintiff shall not be required to pre-pay the full filing fee of four hundred dollars (\$400.00).
2. Plaintiff is permitted to maintain this action to conclusion without the necessity of prepayment of any additional fees or costs or the giving of a security therefor. This Order granting leave to proceed in forma pauperis shall not extend to the issuance of subpoenas at government expense.
3. The Clerk of Court shall file the Complaint.
4. The Clerk of the Court shall serve the Commissioner of the Social Security Administration by sending a copy of the summons and Complaint by certified mail to:
Office of the Regional Chief Counsel, Region IX
Social Security Administration
160 Spear St., Suite 899
San Francisco, CA 94105-1545

